

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, June 25, 2008, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** Robert Bartholomew, Vice-chairman  
Ray Dwyer  
Tom Day  
Walter Schmidt

**BOARD MEMBERS ABSENT:** James Ward, Chairman

**SECRETARY TO THE BOARD:** Mary E. Finet

**OTHERS PRESENT:** Jake E. Ewig, BA08:029, petitioner  
Kenneth and Laurene Hebbe, BA08:030, petitioners  
Randal and Gladys Schwartz, BA07:068, petitioners  
Jim Ellingson, BA07:068, builder  
Frank and Anna Weissenberger, BA07:068, neighbors

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Dwyer *I move to approve the Summary of the Meeting of June 11, 2008.*

The motion was seconded by Mr. Schmidt and carried with three (3) yes votes. Mr. Day abstained because he was not present at the meeting of June 11, 2008.

**NEW BUSINESS:**

**BA08:029 JAKE E. EWIG**

Mr. Dwyer *I move to approve the request, in accordance with the staff's recommendation, as stated in the Staff Report, and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Day and carried with three (3) yes votes. Mr. Schmidt abstained because he did not feel that a hardship had been demonstrated to justify granting the requested floor area ratio variance.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a special exception from the accessory building floor area ratio requirement and of variances from the floor area ratio and open space requirements of the Waukesha County Shoreland and Floodland

Protection Ordinance, to permit the construction of a detached garage, subject to the following conditions:

1. The garage shall be no larger than proposed, 22 ft. x 28 ft., and the overhangs of the garage must not exceed 2 ft. in width.
2. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.
3. The proposed garage may contain an upper-level storage area only if the garage conforms with the height requirement noted above and only if that upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.
4. Prior to the issuance of a Zoning Permit, a complete set of plans for the proposed garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. The garage must be located at least 6.16 ft. from the side and the rear lot lines, as measured to the outer edges of the walls.
6. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed detached garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
7. The existing 10 ft. x 15 ft. shed must be removed from the property, prior to the issuance of a Zoning Permit for the detached garage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested variances would preclude the construction of a detached garage, which is unnecessarily burdensome, given that there is no garage on the property. The proposed garage is not excessively large, it is in keeping with other garages in the neighborhood, and it will be more aesthetically appealing than the shed it would be replacing. Further, the proposed garage would be built in a conforming location and is not contrary to the public interest. Therefore, the approval of a special exception from the accessory building floor area ratio requirement and of variances from the floor area ratio and open space requirements, to permit the construction of the proposed detached garage, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA08:030 KENNETH SCHAUFELBERGER (Primary Applicant)**  
**KENNETH AND LAURENE HEBBE (Co-applicants)**

Mr. Schmidt

*I move to adopt the staff's recommendation to approve the request, as stated in the Staff Report, for the reasons stated in the Staff Report, and with the three conditions recommended in the Staff Report.*

The motion was seconded by Mr. Day and carried unanimously.

The Planning and Zoning Division staff's recommendation was for approval of the request for variances from the requirement of the Waukesha County Shoreland and Floodland Protection Ordinance that stairs in the shore setback area cannot exceed three (3) ft. in width and from the shore setback requirement of the Waukesha County Shoreland and Floodland Protection Ordinance that does not permit retaining walls within the 75 ft. shore setback area, unless they are necessary to abate a known and identified soil erosion and sedimentation problem, subject to the following conditions:

1. Prior to the issuance of a Zoning Permit for the stairs and associated fieldstone retaining wall, written documentation from the Washington County Highway Department that they do not object to the stairs being located partially within the right-of-way of C.T.H. "Q" must be submitted to the Waukesha County Department of Parks and Land Use - Planning and Zoning Division staff.

*Note: Although this property is located entirely within Waukesha County, C.T.H. "Q" is for the most part located along the border between Waukesha County and Washington County and, per an agreement between the two counties, that portion of C.T.H. "Q" in the area abutting the subject property, is maintained and regulated by Washington County.*

2. Prior to the issuance of a Zoning Permit for the stairs and associated fieldstone retaining wall, the location of the fieldstone retaining wall within 5 ft. of the west lot line must be approved by the Town of Lisbon Plan Commission and by the Waukesha County Park and Planning Commission.
3. Unless it can be demonstrated by a Plat of Survey prepared by a registered land surveyor that the stairs and the associated fieldstone retaining wall along the side of the stairs do not encroach onto the adjacent property to the west (the Hebbe property), an agreement must be recorded in the Waukesha County Register of Deeds office indicating that Mr. and Mrs. Hebbe are aware that the fieldstone retaining wall associated with the stairs on the Schaufelberger property and possibly the stairs themselves may encroach onto their property. A copy of such an agreement, in a form suitable for recordation, must be submitted to the Waukesha County Department of Parks and Land Use - Planning and Zoning Division staff for review and approval, prior to its recordation in the Waukesha County Register of Deeds office.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height,

bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. As pointed out by the petitioner, the location of the guardrail along C.T.H. "Q" limits the area in which stairs to the lake could be located to the western portion of the property. Due to the slope and the proximity of a large culvert on the adjacent lot to the west, a retaining wall is necessary along the west side of the stairs. In addition, the steep slope between the road and the lake and the shallow lot depth are physical limitations that necessitate the installation of a curved staircase, which requires a wider tread width to permit a safe access to the lake. Therefore, a hardship has been demonstrated. Finally, the stairs and associated fieldstone retaining wall are not contrary to the public interest. Therefore, approval of the requested variances from the requirement that stairs in the shore setback area cannot exceed three (3) ft. in width and from the shore setback requirement that prohibits retaining walls within the 75 ft. shore setback area, unless they are necessary to abate a known and identified soil erosion and sedimentation problem, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

#### **OTHER ITEMS REQUIRING BOARD ACTION:**

##### **BA07:068 RANDAL SCHWARTZ**

Mr. Schmidt *I move to reconsider the conditions of our approval of variances granted to permit the construction of a new single-family residence on September 26, 2007 and amended on October 24, 2007 and November 14, 2007.*

The motion was seconded by Mr. Dwyer and carried unanimously.

Mr. Schmidt *I move to adopt the staff's recommendation to amend Condition No. 11 of the previous approval, as set forth in the Memorandum from Sherri Mount, dated June 25, 2008, for the reasons stated in the Memorandum.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The Planning and Zoning Division staff's recommendation, as stated in the Memorandum from Sherri Mount, was to amend Condition No. 11 to read as follows:

"The residence and attached garage and all other appurtenances must be at least ten (10) ft. from the north and south lot lines, as measured to the outer edges of the walls and any windows/bump outs that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width. A covered entryway/stoop along the side of the residence, however, can be as close as 6 ft. from the property line and this area may extend down to the depth of the foundation (i.e. the now existing foundation may remain in its current location). The entire 4-ft. stoop may have a roof over it."

The reasons for the recommendation, as stated in the Memorandum, are as follows:

The small extension of the foundation was done due to poor soil conditions and has no adverse impact on any adjoining property owner. This extension is completely underground and cannot be seen by anyone, but it does provide valuable storage space for the owners. It is not necessary in this particular case to require this portion of the foundation to be removed and/or closed off from the rest of the foundation in order to uphold the purpose and intent of the Ordinance. Furthermore, the approval of the request to amend Condition No. 11 of the Board's November 14, 2007, decision as recommended, does not appear to alter the spirit and intent of the Board's original decision. Therefore, the approval of this request, as recommended, remains in conformance with the purpose and intent of the Ordinance.

**ADJOURNMENT:**

Mr. Dwyer *I move to adjourn this meeting at 7:29 p.m.*

The motion was seconded by Mr. Day and carried unanimously.

Respectfully submitted,

Mary E. Finet  
Secretary, Board of Adjustment